

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

THE TRUSTEES OF PURDUE	)	Case No. 6:21-CV-727-ADA-DTG
UNIVERSITY,	)	
	)	
Plaintiff,	)	<b>**VIA ZOOM TELECONFERENCE**</b>
	)	
v.	)	
	)	
STMICROELECTRONICS, INC.,	)	
et al.,	)	
	)	
Defendants.	)	
	)	Tuesday, December 6, 2022
	)	1:30 P.M.

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TRANSCRIPT OF DISCOVERY HEARING  
**BEFORE THE HONORABLE DEREK T. GILLILAND**  
**UNITED STATES MAGISTRATE JUDGE**

APPEARANCES ON NEXT PAGE.

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DirectCrossRedirectRecrossWITNESSESFOR THE GOVERNMENT:

(None)

FOR THE DEFENDANT:

(None)

EXHIBITS:IDEVDFOR THE GOVERNMENT:

(None)

FOR THE DEFENDANT:

(None)

Waco, Texas - Tuesday, December 6, 2022

(1:30 p.m.)

P R O C E E D I N G S

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THE COURT: All right. Good afternoon, everybody.  
We're here for a discovery dispute. And I'm going to start by  
asking Ms. Copp to call the case, please.

THE CLERK: Yes, Your Honor.

Calling Case Number WA:21-CV-727, styled The Trustees  
of Purdue University vs. STMicroelectronics, Inc., et al., called  
for a discovery hearing.

THE COURT: And could I get announcements starting with  
the plaintiff?

MR. SHORE: Yes, Your Honor. Good afternoon. This is  
Michael Shore, and with me today are Abbey McNaughton from the  
Susman Godfrey firm representing Purdue University.

THE COURT: Thank you, Mr. Shore, Ms. McNaughton.

And for defendant?

MR. CHIBIB: Good afternoon, Your Honor. Mike Chibib  
at Bracewell on behalf of third-party subpoena recipient X-Fab.  
With me are Michael Munoz and Jill Gately of the Choate Hall firm  
also for X-Fab.

THE COURT: Okay. Very good. Good to see you, Mr.  
Chibib.

And then for -- do we have somebody on for STMicro?

MR. CICCARELLI: Yes, Your Honor. On behalf of STMicro

1 is Max Ciccareli and Bruce Sostek.

2 THE COURT: All right. Very good. Good to see you,  
3 Mr. Sostek and Mr. Ciccarelli.

4 All right. So we've got the subpoena from Purdue to  
5 X-Fab that looks like it's issued out of the Northern District of  
6 Texas. So I'm kind of inclined to just direct the parties to  
7 address it with the Court in the Northern District, but I'm happy  
8 to hear argument on it real quick.

9 So with that in mind, Mr. Shore, I don't know if you're  
10 going to be addressing it or if Ms. McNaughton or who wants to  
11 address the subpoena to X-Fab?

12 MR. SHORE: I'll address it, Your Honor.

13 THE COURT: Okay.

14 MR. SHORE: First of all, it requires a little bit of  
15 background explanation. One of the past licensees of Purdue  
16 University for the patent at issue in this case, the '633 patent,  
17 was a license to GE Global Research. That license also allowed  
18 other GE entities acting through GE Global Research to enjoy the  
19 benefits of the license.

20 That particular license does not include "have made"  
21 rights. It does not include foundry rights. It is a research  
22 and development license. And the key to that is only \$75,000 was  
23 paid by GE for two reasons. One, it's a research and development  
24 license and, number two, there's 120 years of commercial  
25 cooperation between GE and Purdue which Purdue takes into

1 consideration when it grants a license to somebody, especially  
2 one for research and development purposes only, which is what  
3 this was.

4 Now GE in discovery during a deposition admitted to  
5 multiple violations of that research and development license.  
6 They admitted that they were having products made by a third  
7 party in violation of the license because the license does not  
8 include "have made" rights or foundry rights. And they  
9 identified that party is X-Fab.

10 They also admitted to violating the marking provision  
11 of the license. They admitted to violating -- not paying the  
12 payments for maintenance fees and maintaining the license under  
13 the patent. They admitted to several violations of the license.

14 Now why does that lead us to X-Fab? Well, in the  
15 middle of that deposition, of course, it was obstructed,  
16 questions were refused to answer. There's a whole other  
17 proceeding on the GE deposition about how they ultimately just  
18 got up and walked out because they refused to answer any  
19 questions about the X-Fab relationship, about what was going on  
20 at X-Fab, et cetera.

21 Why is that important? Well, GE knows that now GE is  
22 breaking up into three pieces. There's going to be a GE  
23 Aerospace, there's going to be a GE Energy, and then there's  
24 going to be a GE Healthcare. The research and development  
25 license to GE Global Research is non-transferrable and not

1 assignable.

2 So that means that GE Aerospace who is selling products  
3 covered by the patent, and which they pretty much admitted are  
4 covered by the patent, will need a license upon the breakup of GE  
5 this year or early 2023. So GE has every incentive to align  
6 itself with ST to try to claim that that \$75,000 was not a  
7 research and development license, that that was some sort of a  
8 commercial license even though GE had no ability, none, to make  
9 the parts independent of using a foundry or a third party.

10 So it is going to be a huge issue in the case, and ST  
11 has already made it a huge issue in the case that they want to  
12 tout this \$75,000 license as a license that is commercial and  
13 that is a market setter license for the technology. GE Aerospace  
14 and GE have a similar motivation to also show that this is a  
15 commercial license and not a research and development license  
16 despite the fact that the license literally says that it's  
17 limited to actions taken through GE Global Research.

18 We learned in the GE deposition that GE only has one  
19 four-inch wafer fab which is completely uneconomical for  
20 commercial use. They use that same four-inch fab to do all of  
21 their research and development on all types of semiconductor  
22 products. So it's never been a commercial fab, and it is  
23 incapable of being a commercial fab.

24 So what we have to do to rebut the arguments by ST and  
25 its ally, GE, that the license is a commercial license is we have

1 to establish that GE never had the capacity to make silicon  
2 carbide MOSFETs independent of using an outside third-party  
3 foundry or an outside third-party manufacturing supplier.

4 For example, GE does not own implantation devices that  
5 would allow it to implant into silicon carbide. They have never  
6 possessed that equipment. In a subsequent deposition that was  
7 taken a couple of weeks ago, we had deposed a former employee of  
8 GE and he said that they were sending out -- even years before  
9 the license, they had to send out wafers to third parties for  
10 certain steps in the process because they did not have the  
11 capability to do it.

12 So why is this X-Fab deposition and documents  
13 important? Well, first of all, GE has refused to provide any  
14 documents, and there's a separate motion to compel on that. So  
15 X-Fab's argument that we should get these documents from GE is on  
16 its face refuted by GE's refusal to provide any documents. ST  
17 has supported GE's refusal to provide any documents, and there is  
18 a motion pending before the Court on that issue.

19 GE has also refused to continue the deposition to  
20 answer the questions that need to be answered related to the GE  
21 X-Fab relationship to prove that GE never had the capacity to  
22 build products, certainly not on a commercial basis. In fact,  
23 they didn't even have the ability to produce prototypes.

24 So what do we want from X-Fab and why is that  
25 important? This is a \$5-billion case. Between the past sales



1 and the future projected sales, and this is public information  
2 that you can get from analyst calls and other things, ST has sold  
3 and expects to sell during the life of the patent \$5 billion  
4 worth of products.

5 The established licensing rate is 3-1/2 percent, and  
6 there will be by the time we get to trial multiple licensees at  
7 that rate. So they're going to stand up at trial and they're  
8 going to say, but wait a minute, there's a \$75,000 license and  
9 that's a commercial license and that's what you should really  
10 consider, not all of these other licenses at 3-1/2 percent.

11 So what we have to do is we have to show that the  
12 circumstances indicate, as a matter of fact, the only thing the  
13 circumstances indicate is that it's a research and development  
14 license. So what we need to do is we need to show the  
15 communications, all communications between X-Fab and GE showing  
16 that GE needed X-Fab to make these parts because it could not  
17 make them itself.

18 We need all those communications between X-Fab and GE  
19 to show when they started the process with GE and how GE had no  
20 ability to make these parts internally, at least not from  
21 beginning to end. We need to see from the X-Fab agreements with  
22 GE that GE intended to use X-Fab long term and has reserved  
23 capacity at X-Fab to make these parts, again showing that they  
24 were never going to be made in GE and that GE didn't have the  
25 capability to make them.

1           Now this is not a broad -- there's no evidence, no  
2       declaration, nothing that this is unduly burdensome, overly  
3       broad. So in the Fifth Circuit, that ends it. If you don't put  
4       on evidence of burden, if you don't put on evidence of expense,  
5       you cannot argue that. Those objections are waived. There's no  
6       evidence.

7           Even if they -- and this only covers one product,  
8       silicon carbide MOSFETs. And we agreed if they would give us the  
9       documents, to limit it to one customer, GE. And they refused,  
10      and so I thought it was kind of amusing that they said, oh, well,  
11      cut off all their discovery because they didn't agree because  
12      they want more than just GE when we made that offer and they  
13      refused it.

14          The reason why other companies are important, and if  
15      we're going to be there taking the deposition anyway on GE and if  
16      we're going to get the documents on GE, the other companies are  
17      important for validity. Long-felt need. The market, how the  
18      market has expanded, how there's a huge demand for silicon  
19      carbide capacity. As a matter of fact, X-Fab also makes products  
20      for another licensee of Purdue, SemiQ. We believe they also make  
21      products for other companies, again, their capacity limited.

22          They're one of the few fabs in the world who could  
23      actually make these parts. And they are under demand and they  
24      are able to increase prices and other things related to this.  
25      And all of that shows long-felt need and other validity concerns,

1 market acceptance, et cetera.

2 So we're willing to limit it to GE, GE material and  
3 that was the original focus. But we do believe that if we're  
4 going to be there taking their deposition anyway and, again,  
5 we're only talking about one product, silicon carbide MOSFETs.  
6 And we think that who else they may be making it for is also  
7 relevant and discoverable on validity concerns or for validity  
8 reasons.

9 But the primary reason, a critically important reason  
10 to my client is we need to be able to show that GE did not, never  
11 had, never thought they had, never expected to have a commercial  
12 license for \$75,000 because they had zero ability to make a  
13 commercial product in their four-inch fab and they were  
14 completely dependent upon X-Fab to do it.

15 So this is not a minor issue. It is a major issue. It  
16 is probably the issue that ST wants to try to use to tell the  
17 jury that this technology is not worth very much. And if ST's  
18 going to try to make the argument that this technology is only  
19 worth \$75,000, Purdue must be able to go down the two paths that  
20 show that that is incorrect. It is incorrect factually, and it's  
21 incorrect technologically. And as far as the license terms, it's  
22 incorrect legally.

23 So that's our position. This is -- you know, third  
24 parties in the federal court system, we have subpoenas for third  
25 parties. They don't just get to ignore subpoenas. They don't

1 get to just say we don't want to play in the legal system. If  
2 witnesses can just refuse to participate in the legal system,  
3 then we don't have a legal system anymore and what we have is an  
4 arbitration system where you don't get the evidence you need to  
5 put on your case even whereas here everyone agrees it's  
6 important.

7 This is the first discovery hearing Bruce Sostek has  
8 attended in this entire case. Why do you think he's here?  
9 Because this is a critical, critical issue. It's a critical  
10 issue for my client. It's a critical issue for ST. And at the  
11 end of the day, all the facts need to be on the table. We can  
12 argue about what they mean, but all the facts should be on the  
13 table so that each side has a fair opportunity before the jury to  
14 make their case. And that is what this is about.

15 THE COURT: All right. Let me ask you, Mr. Shore, I  
16 mean the place of compliance for the subpoenas is the Northern  
17 District of Texas. And the way I see Rule 45, any issues doing  
18 or concerning the subpoenas should be first taken up in that  
19 district. How does it get to me? Why shouldn't it just be sent  
20 to the Northern District to resolve?

21 MR. SHORE: Well, Your Honor, I think the parties had  
22 agreed to put it in front of this Court because the Northern  
23 District of Texas is going to transfer it down here anyway most  
24 likely. And so if the other side refuses to agree to this  
25 process, they agree -- they filled out their side of the chart.

1 Now it's all done.

2 If they want us to go and waste several weeks going to  
3 the Northern District of Texas and waste more of their client's  
4 money to do that, I suppose they can make that argument. But I  
5 imagine just like the other cases was referred to this Court, I  
6 believe it was from Colorado or some other place that sent the  
7 other dispute here, this one's going to be here, too, most  
8 likely.

9 So I thought that the parties had kind of agreed to  
10 short-circuit that process and abide by whatever ruling comes out  
11 of this Court.

12 THE COURT: Okay.

13 All right. Let me -- I guess, Mr. Chibib, will you be  
14 responding for X-Fab?

15 MR. CHIBIB: Yes, Your Honor. I will. Thank you.

16 I mean, first of all, Your Honor, clearly, we object to  
17 the subpoena that it is entirely overburdensome, overbroad, and  
18 it's completely duplicative with the requests that Purdue has  
19 made to GE. I want to lay that out first. But I think it's  
20 important for us to set the scene a little bit, keeping in mind  
21 Mr. Shore's comments that they want to prove that GE did not have  
22 certain capabilities.

23 First of all, my client, X-Fab, is not a party to this  
24 case. My client's products are not implicated in this case  
25 whatsoever. None of the defendants, the ST entities, buy

1 products from us. We are completely outside of this lawsuit.

2 GE is not a party to this case. So what we're talking  
3 about here is a third-party subpoena to get documents from  
4 another third party. This is how removed from this case X-Fab  
5 is. And then you tack on the notion that what Purdue is trying  
6 to obtain and the types of documents they're trying to obtain all  
7 relate to a contract that Purdue has with GE, right, a contract  
8 that they're trying to interpret.

9 And, Your Honor, I mean I don't need to tell you,  
10 that's your job to completely interpret a contract within the  
11 four corners of that document. I don't see how X-Fab's documents  
12 not only how they're relevant to the interpretation of that  
13 document but how they're not completely duplicative with the  
14 identical documents that they're seeking from GE.

15 You had mentioned, Your Honor, the Northern District,  
16 and I wanted to just interject. We are fine with Your Honor  
17 punting this to the Northern District. We do think, though, that  
18 after hearing our position that Your Honor will be able to quash  
19 the subpoena and remove any production obligation on behalf of  
20 X-Fab.

21 So let's again, let's talk about where we are. Purdue  
22 has subpoenaed GE. Purdue has already taken a deposition of GE  
23 regarding these identical issues. They weren't happy with what  
24 they got in the deposition. They filed a motion with Your Honor  
25 where they briefed a motion to compel discovery from GE. GE has

1 responded to that. ST has even responded to that. So three  
2 different parties have briefed this up and teed it up for Your  
3 Honor.

4 We think that X-Fab again is so far removed that all  
5 those issues can be resolved by Your Honor by addressing the GE  
6 motion itself. If Your Honor orders production from GE, great.  
7 X-Fab doesn't need to do anything. If Your Honor says the  
8 production from GE is not appropriate, great. The discovery from  
9 X-Fab is similarly not appropriate.

10 So we feel like this is completely unnecessary and that  
11 we are being dragged in to a dispute that Purdue has with GE.  
12 And I'll also note as Mr. Shore explained at the very beginning  
13 of his presentation, it sounds like they have breach of contract  
14 claims against GE. But keep in mind, they don't have a case  
15 against GE.

16 So, again, they could bring GE in as a party to  
17 whatever lawsuit they want to bring relating to that agreement  
18 and get all the documents that they want from that party, again,  
19 keeping X-Fab out of this because, under Rule 26, they're asking  
20 us for an insane amount of documents that would take months of  
21 man hours to gather and produce. And we think, Your Honor,  
22 again, there is no reason to go to plan C and get documents from  
23 X-Fab when they have plan A against GE and plan B against GE in a  
24 separate lawsuit.

25 So that's where we stand on it, Your Honor. I'm happy

1 to talk about any other issues. And also know that X-Fab has  
2 third-party confidentiality obligations to GE. So even if we had  
3 to produce documents, we would still have to get permission from  
4 GE to produce those documents. So it just seems incredibly  
5 wasteful of your time and our time in order to address this.

6 THE COURT: Okay. And to make sure I follow, the  
7 contract that sort of caused all this to come about is a contract  
8 between plaintiff Purdue and GE, and then GE and X-Fab have  
9 further relationship that's related to that contract?

10 MR. CHIBIB: We don't have anything that's related to  
11 that contract, Your Honor. There's nothing -- I mean we  
12 definitely -- they're a customer of ours. GE is a customer of X-  
13 Fab, but that's separate and apart from any agreement that they  
14 have with Purdue.

15 THE COURT: Okay. Okay.

16 Thank you, Mr. Chibib.

17 I'm going to give you just a little bit longer, Mr.  
18 Shore, but go ahead and respond. It really does sound like X-Fab  
19 is getting extremely tangential to the real crux of the case. So  
20 I'll give you just a couple of more minutes to convince me  
21 otherwise.

22 You're on mute.

23 MR. SHORE: They're not tangential at all.

24 Purdue did not subpoena GE. ST subpoenaed GE. Purdue  
25 did a cross-notice asking for the same documents that were called



1 for in the ST subpoena, and what ended up happening is ST and GE  
2 got together collusively, collusively and ST told GE I guess  
3 after they were told that maybe these documents won't be good for  
4 you, ST and GE decided they weren't going to make anybody produce  
5 any documents.

6 So GE just did not produce a single document, did not  
7 object to anything in the subpoena or in the cross-subpoena.  
8 They just didn't produce the document. Then when we got to the  
9 deposition, GE refused to answer questions about X-Fab. Just  
10 refused to answer them, not based on privilege, just instructed  
11 the witness not to answer in violation of the rules because GE  
12 and ST are colluding to try to turn a research and development  
13 license into a commercial license because ST is infringing and GE  
14 is infringing and GE Aerospace needs a license.

15 So they had a common interest in denigrating the IP and  
16 in trying to show that the IP can be licensed cheaply. The way  
17 that we can refute that and the only way that we can refute that  
18 is to show that that license was not a commercial license but a  
19 research and development license.

20 How do you prove that? You prove that by showing that  
21 GE had to go to X-Fab to build the products. They had no ability  
22 internally to build them themselves. That refutes any claim that  
23 it was a commercial license. That kills it. So that is why we  
24 need the documents from X-Fab. These documents go back about  
25 seven years.

1           So there is no guarantee that what GE has is going to  
2     be the same as what X-Fab has. There is -- he just said that it  
3     would take months of man hours. That is completely nonsense.

4           THE COURT: All right. Let me ask you, Mr. Shore,  
5     where does discovery stand with regard to GE?

6           MR. SHORE: They're refusing. They're just flat out  
7     refusing to provide any documents, not a single document.  
8     They're flat out refusing that they walked out of the deposition,  
9     they instructed the witness not to answer any questions about  
10    X-Fab despite there being no privilege or any other limitation  
11    involved.

12          And so, again, we offered to limit the subpoena topics  
13    to documents exchanged between X-Fab and GE, okay. That's one  
14    customer, one product. It could be retrieved in a day. There is  
15    no evidence, none, about burden. There is no evidence in the  
16    record.

17          THE COURT: As far as GE goes, is there pending -- I  
18    was trying to skim the docket here. There's a pending motion to  
19    compel against GE and a motion to quash. Is that still pending  
20    before the Court?

21          MR. SHORE: It's been fully briefed, and I don't  
22    believe it's been set for hearing.

23          MR. CHIBIB: It's Docket Item 163, Your Honor.

24          THE COURT: Okay, thank you.

25          MR. SHORE: But it's been fully briefed for a while.

1 And for whatever reason, I don't think that a hearing has been  
2 set.

3 THE COURT: Okay.

4 MR. SHORE: But even if a hearing was set, it still  
5 doesn't change the dynamic that we have a legitimate need for the  
6 evidence and a \$5-billion lawsuit for documents related to this  
7 license or documents related to the relationship between X-Fab  
8 and GE. There is no evidence from X-Fab of any burden, none,  
9 zero. No declaration, nothing. It's one customer, one product.

10 And there is no reason that I can see why a third party  
11 can just say we refuse to participate because -- they're not  
12 saying the information we're seeking is not relevant. It is  
13 clearly relevant. I've explained why it's relevant. They're  
14 just saying they don't want to participate in it because they're  
15 a third party. If that's how it works, then throw Rule 45 out  
16 the window.

17 THE COURT: All right. I am going to go off the record  
18 just briefly.

19 (Off the record from 1:54 p.m. to 2:00 p.m.)

20 THE COURT: We're back on the record.

21 One thing I wanted to get a clarification on, Mr.  
22 Chibib, is X-Fab consenting I guess to this Court determining the  
23 subpoena for all purposes or is there some qualification to that?

24 MR. CHIBIB: No qualification, Your Honor. We're happy  
25 with you deciding.

1 THE COURT: Okay. So what I'm going to do is that it  
2 looks like X-Fab as well as looking back at the docket some of  
3 these other third parties are sort of dominoes that are in line  
4 after the GE domino needs to be sorted out. And I see that  
5 that's been fully briefed.

6 So what I'm going to do at least as far as X-Fab goes  
7 today I'm going to take this under advisement. We're going to  
8 move the GE briefing to the top of the pile. It would seem like  
9 we'd be taking things, I'd be taking things out of order to rule  
10 that X-Fab has to produce documents now before we've fully  
11 evaluated and ruled on the GE subpoena and the GE motion to  
12 compel.

13 So that's what I'm going to do for today is take this  
14 under advisement. We'll get a -- we'll look at the GE documents.  
15 We'll see about whether Judge Albright refers that to me for a  
16 decision or keeps it, but we'll get that decided quickly and then  
17 this and the other third party ones will kind of domino after  
18 that.

19 I know we've checked. I think fact discovery runs in  
20 February, so we'll get an answer on this as quick as we possibly  
21 can. I won't go quite so far as to say this week, but we'll do  
22 it as fast as possible so we'll have it out in time to make use  
23 of it before that fact discovery cutoff.

24 But I don't think it's prudent to require X-Fab to  
25 produce documents before we've decide what GE is going to be

1 required to do since they are the vehicle by which X-Fab finds  
2 itself before the Court.

3 So with that, we'll take it under advisement. And I  
4 was really happy to see Mr. Sostek. I thought he was here just  
5 because he hadn't seen the Court in a while and I hadn't seen him  
6 in a while.

7 MR. SOSTEK: Your Honor, I was here because I thought  
8 Mr. Ciccarelli was in a time zone that might not have permitted  
9 him to attend, but you got both of us instead. But it's great to  
10 see you --

11 THE COURT: I know. It's a great day. Great day.

12 MR. SOSTEK: Thank you.

13 THE COURT: Well, it was great to see you, Mr. Sostek.

14 Okay. So is there anything else? Mr. Shore, you're in  
15 the middle of my screen so I'll start with you. Anything else  
16 that we need to take up today for Purdue?

17 MR. SHORE: No, I think the Court's sequencing is  
18 exactly what should be done. And, frankly, when we had this  
19 dispute with X-Fab, we were kind of hoping that these would be  
20 combined with the GE for one hearing. That was sort of our hope,  
21 and then we could figure out who is going to give up the  
22 information. But somebody needs to give it up.

23 THE COURT: Okay. Okay. I understand. And part of it  
24 is I think having this hearing helped identify for the Court how  
25 all these pieces fit together in a way that makes it easier for

1 us to address.

2 So is there anything else, let me ask Mr. Chibib,  
3 anything else to take up for X-Fab?

4 MR. CHIBIB: No, Your Honor.

5 THE COURT: All right. Thank you, Mr. Chibib.

6 Mr. Sostek, anything for STMicro?

7 MR. SOSTEK: Thank you. Nothing more for today. We  
8 appreciate it.

9 THE COURT: All right. I appreciate everybody's  
10 attendance, and y'all have a great day.

11 MR. SOSTEK: Take care.

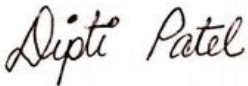
12 THE COURT: We'll be adjourned.

13 (Proceedings adjourned at 2:03 p.m.)

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15 **C E R T I F I C A T E**

16 I, DIPTI PATEL, court approved transcriber, certify that the  
17 foregoing is a correct transcript from the official electronic  
18 sound recording of the proceedings in the above-entitled matter.

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22 DIPTI PATEL, CET-997

23 LIBERTY TRANSCRIPTS

Date: December 13, 2022